HIGH COURT OF ORISSA,
CUTTACK

CRIMINAL APPEAL NO. 46 OF 1989

From the judgment dated 21.12.1988 passed by Sri K. C. Panda, Addl. Sessions Judge, Titilagarh in Sessions Case No.61/13 of 1988.

Lambodar Behera ..... Appellant

Versus

State of Orissa ..... Respondent

For appellant : M/s N. C. Pati, A.K. Nanda

For respondent : Mr. S. Behera,
Addl. Govt. Advocate

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 05.01.2007

PRADIP MOHANTY,J. This appeal arises out of the judgment and order dated 21.12.1988 passed by the Addl. Sessions Judge, Titilagarh convicting the appellant under Section 376 IPC and sentencing him to undergo rigorous imprisonment for seven years in Sessions Case No.61/13 of 1988.

2. The case of the prosecution is that the victim(P.W.1) was working as a maid servant in the house of the appellant. She was compelled to have continuous sexual intercourse or cohabitation with the appellant with the assurance of marriage. When the victim conceived, she asked the appellant to marry her but the latter refused to accept her as his wife. Thereafter, she disclosed the fact of her becoming pregnant before her father(P.W.2), who took her to P.W.3, a gentleman of their village, and others and requested them to intervene in the matter. Accordingly, a punch

was convened in the village. Since no amicable settlement could be arrived at, P.W.2 orally reported the matter at Saintala P.S. As the police did not take any action, the victim presented a written report(Ext.1) before the Superintendent of Police, Bolangir and as per his direction the O.I.C., Saintala P.S. registered a case, proceeded with the investigation and after closure of the same submitted charge-sheet under Section 376 IPC against the appellant.

3. The plea of the appellant was complete denial of the allegation.

4. In order to prove its case, the prosecution examined as many as six witnesses including the doctor(P.W.4) and the I.O.(P.W.6). The appellant examined two witnesses to substantiate his plea.

5. The learned Addl. Sessions Judge, Titilagarh, who tried the case, by his judgment dated 21.12.1988 found the appellant guilty of the offence with which he was charged, convicted him thereunder and sentenced him to undergo imprisonment as already indicated. The finding of the trial court was that the appellant compelled the victim to remain silent and her consent for sexual intercourse was obtained on coercion and promise to marry her.

6. Mr. Pati, learned counsel for the appellant, submits that there was inordinate delay in lodging FIR. The medical evidence does not support the prosecution case. As per the evidence of the victim, she was subjected to sexual intercourse in the month of December, 1987 whereas according to the doctor's report the victim became pregnant in the 1st week or 2nd week of November, 1987. Therefore, the version of the prosecutrix (P.W.1) is not believable. There are sufficient materials to infer that P.W.1 was a consenting party to the intercourse. Learned counsel lastly submits that the appellant is a poor Adivasi. Though a State defence counsel was engaged to defend him before the trial court, he could not obtain proper instruction from the appellant due to paucity of time. He is the only bread

earner of his family consisting of wife and children. Therefore, a sympathetic view in the matter may be taken and he may be dealt with leniently.

7. On the other hand, Mr. S. Behera, learned Addl. Government Advocate vehemently contends that the evidence of the prosecutrix coupled with the oral evidence of the doctor (P.W.4) as well as the medical report is sufficient to prove the guilt of the appellant under Section 376 IPC. P.W.4, the doctor, examined the victim(P.W.1) and found that she was running 6 and a half months of pregnancy. The evidence of P.Ws.1, 2 and 4 clearly establishes the charge under Section 376 IPC against the appellant. P.W.3, the independent witness, has categorically stated in his evidence that there was a Panchayat in the village for settling the matter but it was not materialized.

8. Perused the deposition of the witnesses and the exhibits. Coming to the first contention of the appellant, the written report(Ext.1) was submitted on 05.05.1988. The FIR reveals that the sexual intercourse was first committed on P.W.1 in the month of Pausa, that means in the English month of November/December, when the wife of the appellant was absent. The same continued for months together on the appellant giving a false promise to marry the victim. When the appellant refused to marry her, she disclosed the fact to her father. Thereafter, the matter was considered in the village Panchayat, but could not be materialized there. Therefore P.W.2, the father of the victim, orally reported the matter at Saintala P.S. As no action was taken, P.W.1 presented a written report(Ext.1) before the Superintendent of Police, Bolangir and as per his direction the case was registered. In view of the above circumstance, the delay in lodging the FIR has been properly explained.

9. The evidence of the victim(P.W.1) reveals that the first cohabitation was committed by the appellant in the month of December. Thereafter, the appellant continued sexual intercourse with her. The doctor(P.W.4) has stated in his cross-examination that the victim girl was pregnant in the 1st week or 2nd week of November, 1987. The victim was

examined by the doctor on 07.05.1988. However, it is seen that the victim is an illiterate Adivasi lady. She was not in a position even to state about the exact date of her last menstruation. As such, one cannot expect that she would be able to say the exact English month when the sexual intercourse between her and the appellant started. But, she has categorically stated that the appellant frequently cohabited with her by giving a false promise to marry her and as a result of such frequent cohabitation, she became pregnant. In absence of any contra evidence or material on record, the above version of the prosecutrix can safely be relied upon. The contention of the learned counsel for the appellant that the medical report does not support the prosecution case cannot be accepted.

10. P.W.1's evidence reveals that she was working in the house of the appellant as a maid-servant. At the first instance, when the appellant's wife was absent, the appellant came to her, removed the saree from her body and made her naked. He also made her lay down on the ground by using force and penetrated his penish. When the victim tried to shout for help, he pressed a cloth on her mouth. He also threatened to kill her if she disclosed the fact to any body. Her evidence further reveals that the appellant continued sexual intercourse with her for months together in absence of his wife with the assurance of marriage. In the above circumstances, she could not protest for sexual intercourse. Subsequently, however, he refused to marry her. Though P.W. 1 has been cross-examined at length, nothing has been elicited from her to discredit her evidence. Scanning of the evidence of P.W.1 makes it clear that the appellant first started sexual intercourse against her will and without her consent. The victim tried to raise hullah, but the appellant pushed a piece of cloth into her mouth and threatened to kill her if she would shout. In view of the above, consent of the victim was not obtained at the first instance. Subsequently, she consented to the cohabitation because of the false promise of marriage. Therefore, it cannot be said that she was a consenting

party to the sexual intercourse. The third contention of the learned counsel for the appellant thus fails.

11. The evidence, as discussed above, fully establishes the ingredients of section 376 IPC. Furthermore, P.Ws.1, 2 and 3 have categorically stated in their evidence that a Panchayat was convened in the village to settle the matter, but it was not successful. This also finds support from D.Ws.1 and 2. In view of the above, no illegality or irregularity has been committed by the learned trial Judge while appreciating the evidence and this Court does not find any reason to interfere with the same.

11. Coming to the last contention of the learned counsel for the appellant, it is seen that the appellant is really a poor man. He was defended by a State defence counsel before the trial court. At the relevant time, he was a young man of 30 years having his wife and children. Therefore, taking a lenient view of the matter, this Court reduces the sentence to the period of imprisonment already undergone along with a fine of Rs.2000/- (two thousand) in default to undergo rigorous imprisonment for six months. In the event of realization of the aforesaid amount, a sum of Rs.1000/-(one thousand) shall be paid to the victim.

12. In the result, the appeal is dismissed by maintaining the conviction of the appellant under section 376 IPC, but modifying the sentence to the above extent.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
January 5, 2007/ ***Samal***